

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:12-CR-00236-F-1

No. 5:14-CV-00252-F

DAVID NEIL PHILLIPS,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

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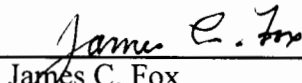
ORDER

This matter is before the court on David Neil Phillips' Motion to Dismiss [DE-99] his pending Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-88]. In his Motion to Dismiss, Phillips seeks to voluntarily dismiss his section 2255 motion on the basis that it was prematurely filed because he intends to file a timely petition for certiorari with the Supreme Court. The Government has filed a Response [DE-101], in which it agrees that Phillips' section 2255 motion is premature. The Government does not oppose Phillips' Motion to Dismiss.

In light of the foregoing, Phillips' Motion to Dismiss [DE-99] is ALLOWED, and his section 2255 motion [DE-88] is DISMISSED without prejudice. The court concludes that the requisite showing to support a certificate of appealability has not been made. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This the 23rd day of February, 2015.



James C. Fox
Senior United States District Judge